IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINETH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.2437 of 1999

Between:

K.Sadhu son of George
Rajendranagar, Hyderabad

and 10 others

..... PETITIONERS

AND

1. Governmentt of Andhra Pradesh,

represented by its Secretary, Industries and Commerce Department
Secretariat, Hyderabad
2 A.P. Khadi & Village Industries Board,

rep. by its Executive Officer Humayun Nagar, Hyderabad
3 Principal, Khadi Gramodyog Maha Vidyalaya
Rajendranagar, Hyderabad

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or order or direction more particularly in the nature of Mandamus declaring that the petitioners who are the employees of the 3rd respondent institution are part and parcel of 2nd respondent Khadi board and entitled to all benefits of 2nd Respondent Board including the pensionary Benefits and Consequently direct extension of benefits like Pension, G.P.F. and all other consequential and attendant benefits by treating them as the employees of 2nd respondent Khadi Board.

Counsel for the Petitioner: Dr. P.B.VIJAY KUMAR

Counsel for Respondent No.1: Government Pleader for Industries

Counsel for Respondents 2&3: Ms.N.NAGAVANI PRASUNA

The Court made the following :

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.2437 of 1999

O R D E R:

This Writ Petition is filed seeking a Mandamus to declare that the petitioners, who are employees of the 3rd respondent-institution, are part and parcel of the 2nd respondent-Khadi Board and entitled to all the benefits as that of the employees of the 2nd respondent-Board including pension, General Provident Fund etc.

There is no dispute as to the facts. The petitioners are all employees of Khadi Gramodyog Maha Vidyalaya, Rajendranagar, Hyderabad, which was set up by the 2nd respondent in pursuance of G.O.Ms.No.146, dated 7-3-1981. Vide G.O.Ms.No.444, dated 5-8-1981, the State Government sanctioned the necessary staff and the 2nd respondent was directed to fill up the posts by following the Recruitment and Service Conditions Regulations of the 2nd respondent-Board. The service conditions framed under Section 29 of the A.P. Khadi and Village Industries Board Act,1958 were approved by the Government of Andhra Pradesh vide G.O.Ms.No.95, dated 17-4-1996. In the said Regulations, it was made clear that all the recruitment and service conditions as applicable to the employees of the 2nd respondent-Board are also applicable to the employees of the 3rd respondent-Maha Vidyalaya. Thus, the 3rd respondent is nothing but a wing of the 2nd respondent,

started, controlled, maintained and managed by it. The Chief Executive Officer of the 2nd respondent is the authority administering the affairs of the 3rd respondent. When three employees of the 3rd respondent-institution retired from service, the 2nd respondent-Board, on obtaining clarification from the 1st respondent, informed that they are not to be treated as employees of the Board to whom the pension scheme is applicable. Further, even among the staff of 3rd respondent, some are covered under the scheme and others are not covered. Such an inter-classification and intra-classification are wholly impermissible, inappropriate and illegal. Further, the General Provident Fund at admissible rates had been deducted from their salaries from the very beginning. There is a variation in percentage and deduction insofar as GPF and CPF is concerned. Having deducted GPF all along, now the Department changes the GPF to CPF in order to change the status of the employees. When the 3rd respondent-institution is a wing of the 2nd respondent-Board constituted under the provisions of the Board, it is not known as to how they can treat the 3rd respondent-institution as a different and distinct entity. The 3rd respondent came into being under the provisions of the A.P.Khadi and Village Industries Board Act,1958. Its Regulations were framed under the Act by the 2nd respondent-Board; as such, there is no justification to treat the employees of the 3rd respondent-institution differently than those of the employees of the 2nd respondent-Board. In fact, as per the Regulations framed, it is made clear that the service conditions of the Board are applicable *mutatis mutandis* to the employees of the 3rd respondent-institution. Thus, there is no justification in treating the employees of the 3rd respondent as a separate one by respondents 1 and 2 and denying the pension and other benefits to the petitioner. Therefore, this Writ Petition.

Detailed counter affidavits have been filed by respondent No.1 and respondents 2 and 3 separately denying the allegations made by the petitioner. In the counter of the 1st respondent, it is *inter alia* stated that the Government vide G.O.Ms.No.444, dated 5-8-1981 issued orders creating necessary teaching staff and administrative staff required for Maha Vidyalaya for a period of one year and to fill up the posts of Khadi Gramodyog Mahavidyalaya by following the Andhra Pradesh Khadi and Village Industries Board Employees Recruitment and Service Conditions Regulations,1979, as there were no regulations for the 3rd respondent-Maha Vidyalaya. The posts are

still continuing. Subsequently, the Government have approved Khadi Gramodyog Maha Vidyalaya (Recruitment and Service Conditions) Regulations,1996 vide G.O.Ms.No.95, Industries and Commerce Department, dated 17-4-1996, It is also stated that after careful examination of the proposals of extension of pensionary benefits submitted by the 2nd respondent and keeping in view the financial implications, the 1st respondent issued G.O.Ms.No.279, Industries and Commerce Department, dated 6-7-1994 extending the benefits of A.P. Revised Pension Rules,1980 to the employees of the 2nd respondent-Board only on par with State Government employees with effect from 1-4-1993 and no mention was made in regard to the employees of Khadi Gramodyog Maha Vidyalaya, Rajendranagar, Hyderabad. Further, petitioners 1,7 and 8 have already been retired from service of Khadi Gramodyog Maha Vidyalaya on attaining the age of superannuation and thus the petitioners were also paid the retirement benefits i.e. CPF and encashment of leave. The present rules of pension scheme are not extended to cover any further additional institutions as per the letters of the Government dated 19-6-1998 and 12-10-1998. The same stand was taken by respondents 2 and 3 by filing a separate counter.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire material made available on record.

At the outset, I am of the opinion that the action on the part of respondents 1 and 2 in not extending the pensionary benefits to the employees of the 3rd respondent-institution is arbitrary and illegal. Admittedly, the 3rd respondent-institution was permitted to be established by the 2nd respondent-Board for undertaking training programme, for training of rural artisans to equip them with necessary knowledge, skill and technology in various khadi and village industries and necessary funds were also released by the Government. Thereafter, vide G.O.Ms.No.444, dated 5-8-1981, the required staff was sanctioned. It was stated that the staff sanctioned for 3rd respondent will cover all the nine disciplines, viz., village oil, village leather, washing soap, toilet soap, cottage match, capentry, blacksmithy, PCPI and Fibre and the Andhra Pradesh Khadi and Village Industries Board shall fill up the posts sanctioned by the Government by following the Service Conditions Regulations of the employees of the 2nd respondent-Board and wherever changes are required, the

Board was supposed to send draft *ad hoc* rules to the Government for approval. In fact, the Chief Executive Officer of the Board was permitted to divert a sum of Rs.1,00,000/- out of the funds provided for marketing agencies utilization towards the cost of staff sanctioned above. Further, the Government directed the 2nd respondent to restrict the recurring liability strictly to the plan provision made in the budget and that the programmes during the remaining period of sixth plan have to be limited to the balance provision agreed to by the Government, viz., Rs.25.00 lakhs. Further, the annexure of the said G.O. reads as under:

S.No.	Name of the post	No.of Posts	Scale of pay
1	Vidyalaya staff i. Principal ii. Rector iii. Lecturer iv. Craft Teacher v. Watchman/Peon vi. Gardner vii. Driver viii. Cooks	0101040604020102	1050-40-1250-50-1600750-30-1020-35-1300700-30-1060-35-1200550-20-850-25-900290-05-345-10-425290-05-345-10-425410-10-460-15-625350-10-460-15-550
2	Administrative staff: i. Administrative Officer ii. Accountant cum Manager iii. UD Clerk iv. LD Clerk v. L.D.Steno	0101010101	750-30-1020-35-1300700-30-1060-35-1200530-15-590-20-850425-10-455-15-650425-10-455-15-650

It is not in dispute that insofar as administrative staff is concerned, they were all deputed from the 2nd respondent-Board to administer the 3rd respondent-institution and the 3rd respondent was sanctioned as many as 21 posts in 8 cadres noted above. The service conditions of the 3rd respondent were framed under G.O.Ms.No.95, dated 17-4-1996 and they are called as 'The Khadi Gramodyog Maha Vidyalaya Employees (Recruitment and Service Conditions) Regulations,1996". Regulation 7 of the said Regulation, which is relevant, reads as under:

"(7) APPLICABILITY OF THE ANDHRA PRADESH KHADI AND VILLAGE INDUSTRIES BOARD EMPLOYEES (RECRUITMENT AND SERVICE CONDITIONS) REGULATIONS,1996 TO KHADI GRAMODYOG MAHA VIDYALAYA:

All the Regulations in the Andhra Pradesh Khadi and Village Industries Board Employees (Recruitment and Service Conditions) Regulations,1996 as applicable to the employees of the Andhra Pradesh Khadi and Village Industries Board shall apply, mutatis mutandis to the employees of the Khadi Gramodyog Maha Vidyalaya, subject to the modifications specified in Regulations 1 to 6 above."

From the above, it is clear that the Regulations applicable to the employees of the 2nd respondent-Board are also applicable to the employees of the 3rd respondent-institution *mutatis mutandis.* There is also no dispute that the employees of the 2nd respondent-Board have been deputed to work in the 3rd respondent-institution. In fact, the posts in the 2nd respondent-Board and the 3rd respondent institution are inter-changeable. While so, the Chief Executive Officer of the 2nd respondent-Board addressed a letter dated 26-2-1994 to the 1st respondent as to the extension of pensionary benefits to the employees of the 2nd respondent on par with the State Government employees. On considering the said letter, the 1st respondent issued G.O.Ms.No.279, dated 6-7-1994. Paragraphs 2 and 3 of the said Governmental Order read as under:

"2. The Andhra Pradesh Khadi and Village Industries Board has passed a resolution on 18-5-1987 for extending the pensionery benefits to the employees of Andhra Pradesh Khadi and Village Industries Board. The Chief Executive Officer, Andhra Pradesh Khadi and Village Industries Board has, accordingly, approached the Government with a request to grant a pension scheme extending the pensionery benefits to the Andhra Pradesh Khadi and Village Industries Board Employees on par with State Government Employees, as the Khadi Boards in the neighbouring State viz., Tamil Nadu, Karnataka, Kerala, Maharashtra and Rajasthan have already extended pensionery benefits to their employees on par with State Government Servants. The Khadi and Village Industries Commission, which has given the benefits of pension in lieu of Contributory Provident Fund to their employees has also recommended the same to the Andhra Pradesh Khadi and Village Industries Board Employees. The State Government is providing 100% grant-in-aid to the Khadi and Village Industries Board towards the salaries of its employees. The Andhra Pradesh Khadi and Village Industries Board employees are getting their scales of pay, Dearness Allowance, traveling allowance etc., on par with State Government employees.

3. The Government, therefore, after careful examination of the above proposals, hereby order that a Pension scheme may be introduced extending the benefits of Andhra Pradesh Revised Pension Rules,1980 applicable to State Government servants to the employees of Andhra Pradesh Khadi and Village Industries Board with effect from 01-4-1993, in lieu of the present Contributory Provident Fund Scheme in the Board."

From the above G.O. it is seen that the Chief Executive Officer of the 2nd respondent had sought for extension of pensionary benefits as applicable to the Government employees to the employees of the Board; therefore, the said G.O. was issued. But, it is nowhere stated anything with respect of the employees of the 3rd respondent-institution. The Chief Executive Officer of the 2nd respondent under whom the 3rd respondent is functioning, also addressed a letter to the Government seeking extension of the pensionary benefits as applicable to the Government employees, to the employees of the 3rd respondent-institution. However, it seems on a clarification sought by the 2nd respondent, the 1st respondent sent a reply dated 12-10-1998 stating as under:

> "I am directed to invite your attention to the reference cited. The matter of applicability of Pension Scheme to the employees of Khadi Gramodyog Maha Vidyalaya, Rajendra Nagar has been examined in consultation with the Finance and Planning Department. I am directed to inform that in view of the fact that Khadi Gramodyog Maha Vidyalaya has separate service Rules for the employees and as such, it cannot be said that it is part and parcel of Andhra Pradesh Khadi and Village Industries Board. Further, as per the present policy of the Government, the Pension Scheme shall not be extended to cover any further additional institutions. However, it is not possible to extend the pension scheme to Khadi Gramodyog Maha Vidyalaya."

From the above letter, it is seen that since the 3rd respondent-institution has separate service rules for its employees, it cannot be said that it is part and parcel of the 2nd respondent and further as per the present policy of the Government, the pension scheme shall not be extended to cover any further additional institutions and also it is not possible to extend the pension benefits to the employees of the 3rd respondent.

The very object of establishing the 3rd respondent-institution is to train the artisans from various parts of the State for the purpose of development of Khadi and Village industries. Further, as seen from above, Rule 7 of the Khadi Gramodyog Maha Vidyalaya Employees (Recruitment and Service Conditions) Regulations,1996 also contemplates that all the Regulations applicable to the employees of the 2nd respondent-Board are also applicable to the employees of the

3rd respondent-institution *mutatis mutandis,* subject to modifications specified in the Regulations. Further, Regulation 7, which is a saving clause, says that the Regulations shall not adversely affect the persons, who have been appointed to any post in the 3rd respondent prior to the date of publication of the Regulations. Here, it may be necessary to notice that all the employees were appointed prior to the Regulations have come into force as per G.O.Ms.No.444, dated 5-8-1981. Even otherwise, Rule 7 read with Rule 8 would make it clear that all the rules applicable to the employees of the 2nd respondent-Board are also applicable to the employees of the 3rd respondent-institution *mutatis mutandis.* In fact, there was no necessity for the 2nd respondent to ask for a special clarification whether the benefits under G.O.Ms.No.272, dated 6-7-1994 are also applicable to the employees of the 3rd respondent. However, on seeking such clarification, the 1st respondent issued letter dated 12-10-1998, which is not in tune with the purport of the Khadi Gramodyog Maha Vidyalaya Regulations. Once the Regulations of the 2nd respondent-Board are *mutatis mutandis* applicable to the employees of the 3rd respondent, it is not permissible for the 1st respondent to issue such a clarification discriminating between the employees of the 2nd respondent and the employees of the 3rd respondent, which was established with laudable object of training artisans for the very development and implementation of the Khadi and village industries in the State of Andhra Pradesh. Further, it is to be noted that the Khadi and Village Industries Commission gave benefit of pension in lieu of Contribution Provident Fund to their employees and also recommended the same to be applied to the employees of the 2nd respondent-Board. In fact, the GPF at admissible rates has been deducted from the salaries of the petitioners from the very beginning and now it is sought to be converted into CPF to alter the status of the petitioners. Respondent No.1 erred in discriminating between the employees of the 2nd respondent and the employees of the 3rd respondent without there being any cogent and acceptable reasons for the same, except saying that the employees of the 3rd respondent have separate rules and it is not part and parcel of the 2nd respondent-Board. In fact, as noticed above, all the administrative staff were deputed from the employees of the 2nd respondent, whereas the teaching staff were recruited by the 3rd respondent. Since the teaching staff require different skills, there bound to be separate

Regulations for them. But, in view of the fact that the regulations of the employees of the 2nd respondent *mutatis mutandis* applicable to the employees of the 3rd respondent, the stand taken by the 1st respondent is arbitrary and illegal. Further, the stand of the 1st respondent that the pension scheme shall not be extended to cover any further additional institution also cannot be countenanced for the reason that though the service conditions are framed separately, the 3rd respondent is part and parcel of the 2nd respondent and the employees of the 3rd respondent-institution should be treated on par with the employees of the 2nd respondent-Board and consequently, entitled for pension on par with the employees of the State Government. Otherwise, it amounts to invidious discrimination, which does not stand the scrutiny of law. In this regard, it is apt to note the decision of the Apex Court in **UNION OF INDIA V. TULSIRAM PATEL** wherein it was held as under:

> "……..What Article 14 forbids is discrimination by law, that is, treating persons similarly circumstanced differently or treating those not similarly circumstanced in the same way or, as has been pithily put, treating equals as unequals and unequals as equals. Article 14 prohibits hostile classification by law and is directed against discriminatory class legislation. The propositions deducible from decisions of this Court on this point have been set out in the form of thirteen propositions in the judgment of Chandrachud, C.J., in *In re Special Courts Bill, 1978 (1979(2) SCR 476)*. The first of these propositions which describes the nature of the two parts of Article 14 has been extracted earlier. We are not concerned in these appeals and writ petitions with the other propositions set out in that judgment. In early days, this Court was concerned with discriminatory and hostile class legislation and it was to this aspect of Article 14 that its attention was directed. As fresh thinking began to take place on the scope and ambit of Article 14, new dimensions to this guarantee of equality before the law and of the equal protection of the laws emerged and were recognized by this Court. It was realized that to treat one person differently from another when there was no rational basis for doing so would be arbitrary and thus discriminatory. Arbitrariness can take many forms and shapes but whatever form or shape it takes, it is nonetheless discrimination. It also became apparent that to treat a person or a class of persons unfairly would be an arbitrary act amounting to discrimination forbidden by Article 14. Similarly, this Court, recognized that to treat a person in violation of the principles of natural justice would amount to arbitrary and discriminatory treatment and would violate the guarantee given by Article 14.

In view of the above, the action of respondents 1 and 2 in not extending the benefits of pension scheme as applicable to the State Government employees and the employees of the 2nd respondent is arbitrary, illegal and violative of Articles 14

and 16 of the Constitution of India. Further, it may not be out of place to notice that the entire teaching staff in the 3rd respondent is only 21 in number and it will not cast much financial burden on the State. In this regard, I am fortified by the Judgment of the Apex Court in **BANK OF INDIA v. INDU RAJAGOPALAN & OTHERS** wherein it was held as under:

> "**(3)** All that has happened is in such of the banks where a Scheme for voluntary retirement was available, certain employees retired under that scheme. Now a comprehensive Pension Scheme has been framed which came into force w.e.f. November 1, 1993 and applicable uniformly to all Bank employees which provides for voluntary retirement as well. The applicability of these Rules to those employees who have voluntarily retired w.e.f. January 1, 1986 to October 31, 1993 is raised in these matters. It is not possible for Shri V.R. Reddy learned senior counsel who appears for the appellants to point out that there is any significant financial or other burden or difference so far as those who had voluntarily retired and those who had ordinarily retired. In that event where there is no distinction, the authorities having sought to make a distinction and not applied the regulations framed subsequent to their retirement, the High Court has given appropriate directions. **We also notice that the number of employees who have retired in this manner is also very small. Therefore we think no interference is called for in these appeals**. The appeals are, therefore, dismissed with no order as to costs." (emphasis supplied)

For all the above reasons, the Writ Petition is liable to be allowed and is accordingly allowed. No order as to costs.

29-8-2005

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LR COPIES TO BE TYPED